

To: Mr Ernesto Penas Lado

Director of Directorate A - Policy development and co-ordination  
Directorate General for Maritime Affairs and Fisheries  
The European Commission

18 August 2016

Dear Mr Penas Lado,

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**Subject: Concerns about exemptions requested in new joint recommendations for North Western Waters and North Sea fisheries demersal discard plans**

A successful implementation of the landing obligation is crucial for achieving the central objective of the Common Fisheries Policy (CFP) to end overfishing. In our previous correspondence with you (enclosed), we highlighted a number of deficiencies regarding exemptions to the landing obligation included in the delegated acts (DAs) for demersal discard plans for 2016 in the North Western Waters (NWW) and in the North Sea (NS).

We would like to ask the Commission to consider our concerns and recommendations presented in this letter when drafting the DAs that will apply from 2017 onwards. Particularly, we urge the Commission to request clarification and additional information from the Member State groups before (re-)including certain exemptions in the new DAs.

As you will be aware, the Scientific, Technical and Economic Committee for Fisheries (STECF) recently published its evaluation<sup>1</sup> of the joint recommendations (JRs) that these DAs will be based on. We welcome that some of STECF's previous comments about insufficient supporting evidence in the existing regional JRs forming the basis of the DAs for 2016 have been addressed.<sup>2</sup> However, most of the concerns raised by ClientEarth in our previous two letters and our report (enclosed) on exemptions requested in the NWW and NS JRs submitted in 2015 remain valid. For a detailed re-evaluation of the exemptions that were submitted again in the 2016 JRs, please refer to the updated version of Appendix 2 to our report (enclosed).<sup>3</sup>

1. We welcome that additional information to support three *de minimis* exemptions for whiting and one high survival exemption for Norway lobster was submitted as required by Articles 3(2) and 2(3) of last year's NWW DA and NS DA, respectively.<sup>4</sup> However, STECF EWG 16-06 note that some shortcomings with regard to the new discard information provided for several *de minimis* exemptions continue.<sup>5</sup> We strongly support their suggestion that data estimating discards and *de minimis* volumes by those vessels

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1 Scientific, Technical and Economic Committee for Fisheries (STECF) - Evaluation of the landing obligation joint recommendations (STECF-16-10). 2016. Publications Office of the European Union, Luxembourg, EUR XXXX EN, JRC XXXX, XXX pp.

2 *Ibid.*

3 This incorporates the comments of STECF EWG 16-06 and ClientEarth's re-evaluation of the exemption requests submitted for the first time in 2015, considering potential changes to the requests and additional information provided. The codes for the exemption requests (NWW3, NS2 etc.) used in this letter correspond to those used in Appendix 2.

4 Exemptions NWW3, NWW4, NWW5 and NS2 (see enclosed Appendix 2 for the corresponding evaluation).

5 For example, STECF's EWG 16-06 noted that some of the new data was given for all three whiting exemptions (NWW3, NWW4, NWW5) together or without clear indication of the proportion of catches and discard rates accounted for by vessels subject to the landing obligation.

subject to the landing obligation should be provided for all relevant fleets the exemption is intended to apply to, preferably using the template developed by EWG 16-06.<sup>6</sup>

Further, we note that the new information supporting the three whiting exemptions was not included in the NWW JR and does not seem to be publically available. In the interests of transparency and accountability, we ask the Commission to consult with the Member State groups and make this information publicly available.

2. As STECF EWG 16-06 pointed out, it is not clear from the 2016 JRs whether some of the new exemption requests supported by evidence specific to a particular Member State are intended only to apply to that Member State, or also to others.<sup>7</sup> For clarity for operators, enforcement authorities and other stakeholders, the Commission must ensure that this is clear in the DA adopted by the Commission. This means that the scope of such exemptions should be adjusted to apply only to those fleets for which sufficient evidence has been provided. If the exemption is to apply to other fleets, additional evidence should be submitted for these fleets unless it is demonstrated that the already submitted supporting information is equally applicable to them.
3. Several high survival exemption requests rely to some extent on extrapolation of results from one study to a fishery or another fleet, area or season.<sup>8</sup> We support the conclusion of STECF EWG 16-06 that results from specific studies should not be extrapolated without demonstrating that the study conditions are in fact representative of those applicable to the respective fisheries.<sup>9</sup> We urge the Commission to follow STECF's suggestion to await the outcomes of further research regarding high survival which may differ between seasons before approving the relevant exemptions as they stand.<sup>10</sup>
4. For some of the new exemption requests, the *de minimis* percentage would be applied to the assemblage of species subject to the landing obligation, rather than just to the species subject to the exemption.<sup>11</sup> We share STECF's concerns that this could lead to overfishing as it would allow for higher discards than if the percentage were applied to just one species. The *de minimis* percentage should therefore be only applied to the total catch of the given species in the given fishery for which the exemption is sought.
5. We highlight that the scope (e.g. species, gear or area covered) of some requested exemptions changed compared to the JRs submitted in 2015.<sup>12</sup> In these cases, additional evidence covering the changed aspects needs to be provided. We therefore ask the Commission to request this information from Member States before adopting the modified exemptions.
6. Last year, there was a notable lack of provisions in the NWW and NS DAs on documentation of catches and on how compliance with the exemption limits would be controlled. We reiterate that discards under an exemption must be fully and accurately recorded to allow for reliable stock assessments and scientific catch advice, both of

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6 STECF-16-10 (see footnote 1 for full reference), Table 4.1a and Table 4.1b, pp. 39-40.

7 Exemptions NS9, NS10, NWW9 (see enclosed Appendix 2 for the corresponding evaluation)

8 For example exemptions NS12 and NWW10; NS3 (see enclosed Appendix 2 for the corresponding evaluation)

9 Importantly, as we explain in more detail in our report (enclosed), such extrapolation is also not in line with the requirement in Article 15(4)(b) of the CFP basic regulation (Regulation (EU) No 1380/2013) that high survival exemptions must be supported by scientific evidence that demonstrates high survival rates, 'taking into account the characteristics of the gear, of the fishing practices and of the ecosystem'.

10 Exemptions NS12 and NWW10 (see enclosed Appendix 2 for the corresponding evaluation)

11 Exemptions NS9, NS10, NS11 (see enclosed Appendix 2 for the corresponding evaluation)

12 For example NWW1 (now includes VIb), NWW3, NWW4 and NWW5 (now include additional gear), NWW7 (now includes VIb), NWW8 (now includes VIIh) (see enclosed Appendix 2 for the corresponding evaluation)

which are crucial for the achievement of the requirements in Article 2(2) of the CFP basic regulation. The Commission should therefore include adequate provisions on catch documentation for both *de minimis* and high survival discards in the DAs for 2017 and beyond.

We ask the Commission to do what it can to address the deficiencies in the requested exemptions and their supporting information as outlined above, by seeking clarification and additional information from the Member States before the new DAs are adopted. We would welcome your thoughts on the concerns raised in this letter and would be happy to meet with you at your convenience to further discuss these issues.

Yours sincerely,



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#### Attachments

- ClientEarth Report and Appendix 1 on NWW and NS demersal discard plan exemption requests (December 2015)
- ClientEarth Appendix 2 of Report on NWW and NS demersal discard plan exemption requests (August 2016 update)
- Correspondence between ClientEarth and European Commission regarding NWW and NS demersal discard plan exemption requests (December 2015 to March 2016)